

November 20, 1989

Ms. Robbie Dingeman  
KHON-TV  
1116 Auahi Street  
Honolulu, Hawaii 96814

Dear Ms. Dingeman:

Re:Public Inspection of Gubernatorial Pardons

This is in reply to your request for an advisory opinion regarding whether certain gubernatorial pardon information is available for inspection under the Uniform Information Practices Act (Modified) ("UIPA"), Chapter 92F, Hawaii Revised Statutes.

ISSUE PRESENTED

Whether certain gubernatorial pardon information, including the number of pardons, names of persons pardoned, dates of the pardons and offenses committed, is available for public inspection and duplication under the UIPA.

BRIEF ANSWER

Yes. Provided that this information is contained within government records, the UIPA affirmatively requires that "pardons and commutations" be available for public inspection and duplication by the agency or agencies which maintain the government records.

FACTS

Under Article V, Section 5 of the Constitution of the State of Hawaii the Governor is authorized "to grant pardons, after conviction for all offenses, subject to regulation by law as to the manner for applying for same." You have requested an

advisory opinion concerning public access to gubernatorial pardon information under the UIPA. Specifically, you would like to research the number of persons pardoned since statehood, the names of the individuals receiving pardons, the dates that the pardons were granted and the offenses for which the persons received the pardons.

#### DISCUSSION

The UIPA, the State's new open records law, became effective on July 1, 1989. Under the UIPA, "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. . 92F-11(a) (Supp. 1988). In addition, Section 92F-12(a), Hawaii Revised Statutes sets forth "a list of records (or categories of records) which the Legislature declares, as a matter of public policy, shall be disclosed." S. Conf. Comm. Rep. No. 235, 14th Leg. Reg. Sess., Haw. S. J. 689, 690 (1988). With respect to pardons, Section 92F-12(a)(4), Hawaii Revised Statutes provides:

- (a) Any provision to the contrary notwithstanding each agency shall make available for public inspection and duplication during regular business hours:

....

- (4) Pardons and commutations, as well as directory information concerning an individual's presence at any correctional facility.

Prior to the passage of the UIPA, the Governor's Committee on Public Records and Privacy considered the issue of public access to information relating to pardons. The Committee Report noted that "this gubernatorial power is an extraordinary power, and its use needs to be carefully monitored by the public." Report of the Governor's Committee on Public Records and Privacy, Vol. I., p. 140 (1987).<sup>1</sup> The Committee invited the Legislature to "clarify the treatment of these records."

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<sup>1</sup> The Committee also noted that Governor Waihee's administration considered such records as "public". Id. at 140.

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Id. The provisions of Section 92F-12(a)(4), Hawaii Revised Statutes reflect the Legislature's acceptance of this invitation.

Accordingly, pardons granted by the Governor under Article V, Section 5 of the Constitution of the State of Hawaii, the Legislature concluded, were records that "as a matter of public policy" shall be available for public inspection. S. Conf. Comm. Rep. No. 235, 14th Leg. Reg. Sess., Haw. S.J. 689, 690 (1988). To the extent that the number of pardons, names of the persons pardoned, conviction data and the dates of the pardons are contained within government records maintained by an agency, this information must be made available for public inspection. Lastly, we note that "conviction data" is not subject to restrictions upon dissemination by the Hawaii Criminal Justice Data Center, as is the case with most criminal history record information. See, Haw. Rev. Stat. .. 846-8(6) and 846-9 (1985).

#### CONCLUSION

Under the UIPA, gubernatorial pardons were declared by the Legislature as a record (or a category of records,) which as a matter of public policy, shall be available for public inspection. Accordingly, upon the request of any person, any agency maintaining such government records must make them available for public inspection and duplication.

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Hugh R. Jones  
Staff Attorney

HRJ:sc

APPROVED:

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Kathleen A. Callaghan  
Director